

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JUSTIN BROWN	:	NO. 1:03-CV-00449
	:	
	:	
Petitioner,	:	
	:	ORDER
v.	:	
	:	
ANTHONY BRIGANO,	:	
	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's July 22, 2005 Report and Recommendation (doc. 15). No Objection has been filed.

On June 19, 2003, Petitioner petitioned the Court for a Writ of Habeas Corpus, pursuant to 28 U.S.C. §2254 (doc. 1). After a thorough review of the facts and the law, the Magistrate Judge found that Petitioner's petition for writ of habeas corpus should be denied (Id.). The Magistrate Judge specifically found Petitioner's first ground of his petition, based on ineffective assistance of counsel, barred by the applicable one-year statute of limitations set forth in 28 U.S.C. §2244(d) (doc. 15). The Magistrate Judge further found that relief is inappropriate under ground two of the petition, which is based on the state court's denial of withdrawal of Petitioner's guilty plea (Id.). The Magistrate Judge found a procedural default in Petitioner's failure

to file a timely appeal to the Supreme Court of Ohio from the Ohio Court of Appeals' decision affirming the trial court's denial of his motion to withdraw his guilty plea (Id.).

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court concludes that the Magistrate Judge's Report and Recommendation is correct. Accordingly, the Court DENIES WITH PREJUDICE Petitioner's Petition for a Writ of Habeas Corpus (doc. 1), FINDS that a certificate of appealability should not issue with respect to either claim in Petitioner's petition because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" under the first prong of the applicable two-part standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in "good faith" and therefore the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a); Kincade v.

Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: September 20, 2005

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge